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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,892

04/26/2006

Naotaka Tsunoda

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08/08/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

ROBINSON, RYAN C

ART UNIT

PAPER NUMBER

2615

NOTIFICATION DATE

DELIVERY MODE

08/08/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/560,892	<b>Applicant(s)</b> TSUNODA, NAOTAKA	
	<b>Examiner</b> RYAN C. ROBINSON	<b>Art Unit</b> 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/16/2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/16/2005; 2/22/2007</u> .                                   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-10 are pending in the current application.
2. The examiner acknowledges the preliminary amendments filed on 12/16/2005.
3. Claims 4-5 and 10 have been amended on 12/16/2005.

### ***Priority***

4. This application claims priority from PCT application number PCT/JP05/07579, filed on 4/14/2005, which claims priority from Japanese Patent application number 2004-121918, filed on 4/16/2004.

### ***Specification***

5. The disclosure is objected to because of the following informalities: Page 10, line 2 reads "dark noise". It is unclear what the term "dark noise" represents as applied to audio. A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, at line 2, reads "a space *except* a front opening portion of a driver unit *and/or* a back housing portion". The negative limitation "except" in combination with the term "and/or" renders the claim indefinite.

### ***Claim Objections***

8. Claims 4-5 are objected to because of the following informalities: Claims 4 and 5 recite the term "is used as". Examiner suggests that the "said air-permeable porous material" should be recited, preceding a term such as "comprises" or "is a". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**10. Claims 1-3, 6-7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Siska et al. US Patent No. 6,466,681, published on 10/15/2002 (hereby Siska).**

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11. As to claim 1, Siska teaches a headphone apparatus (Fig. 4A) wherein a baffle portion (15) formed to surround a space except a front opening portion of a driver unit (16) and/or a back housing portion (18) formed to cover the back surface of said driver (16) unit is formed using an air-permeable porous material (Col. 7, lines 8-9) The baffle is disclosed as comprising a foam material.

12. As to claim 2, Siska teaches that the baffle portion (15) is approximately cone-shaped. The opening widens along the axis pointing away from driver (16), and therefore is approximately cone-shaped.

13. As to claim 3, Siska teaches that an opening (20, 41) is made in the back surface of said back housing (18).

14. As to claim 6, Siska teaches that the driver unit (16) is provided in a bridge portion (18) shaped like an arch forming a bridge to a rim (14) which forms a frame.

15. As to claim 7, Siska teaches that the cone shape of the baffle portion (15) is asymmetrical with respect to the axis of the cone. Along the axis pointing away from driver (16), the baffle width is greater on the side of component (20) than on the opposite side, suggesting asymmetry.

16. As to claim 10, Siska teaches that a microphone device (Fig. 1, element 30) is attached to the headphone apparatus (1).

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**18. Claims 4-5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siska et al. US Patent No. 6,466,681, published on 10/15/2002, as applied to claim 1 above, (hereby Siska).**

19. As to claims 4-5 and 8-9, Siska does not explicitly disclose that the air permeable porous material is a chemical fiber unwoven fabric, or cellulose based material, that is combined with a porous material such as cloth through an air permeable adhesive layer to stabilize the shape. However, one of ordinary skill in the art, at the time of applicant's invention would have developed a design choice of a suitable, porous material, such as a chemical fiber unwoven fabric, or a cellulose-based material, as well as combining the material with cloth and an air permeable adhesive layer.

***Conclusion***

The prior art made of record

a. US Patent Number **6,466,681**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan C. Robinson whose telephone number is (571) 270-3956. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Suhan Ni, can be reached on (571) 272-7505. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ryan Robinson

/Suhan Ni/  
Primary Examiner, Art Unit 2614